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Sexual Harassment in Education: Recent Legal Developments Under Title IX of the Education Amendments of 1972

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Summary

The U.S. Supreme Court first recognized a claim for sexual harassment in its decision in *Meritor Savings Bank v. Vinson*, a case brought under Title VII of the Civil Rights Act of 1964 which prohibits discrimination in employment. While the Court's initial decisions dealt with sexual harassment in employment, sexual harassment claims were becoming increasingly common in the educational environment. Sexual harassment claims in education fall into three categories: sexual harassment of a student by a teacher, sexual harassment of a student by another student, and sexual harassment of a student by a third person somehow affiliated with the school. Alleged victims of sexual harassment in schools have brought claims under Title IX of the Education Amendments of 1972 which prohibits discrimination based on sex in federally funded education programs and activities. In *Franklin v. Gwinnett County Public Schools*, the Court recognized a teacher's sexual harassment of a student as a form of discrimination based on sex that violated Title IX and allowed the victim to receive monetary damages. In *Gebser v. Lago Vista Independent School District*, the Court held that under Title IX, a school district is not liable for sexual harassment of a student by a teacher "unless an official of the school district who at a minimum has authority to institute corrective measures on the district's behalf has actual notice of, and is deliberately indifferent to, the teacher's misconduct." The U.S. Supreme Court again addressed the issue of the liability of school districts in regard to student-on-student sexual harassment. In *Davis v. Monroe County Board of Education*, the Court held that a school district may be liable under "[a] private Title IX damages action . . . only where the funding recipient is deliberately indifferent to sexual harassment, of which the recipient has actual knowledge, and that harassment is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school." Some federal courts have also considered sexual harassment committed by a third party, other than a student, who is somehow affiliated with the educational program, activity, or institution. This report discusses U.S. Supreme Court decisions on the issue of sexual harassment in schools and how federal courts are addressing the issue where questions remain. This report will be updated as needed. For further discussion of the cases

summarized in this report, see CRS Report 98-727, *Title IX and School District Liability for Sexual Harassment by a Teacher: Gebser v. Lago Vista Independent School District*, by Kimberly D. Jones and CRS Report RS 20211, *School District Liability for Student-On-Student Sexual Harassment: Davis v. Monroe County Board of Education*, by Kimberly D. Jones.

The U.S. Supreme Court first recognized a claim for sexual harassment in its decision in *Meritor Savings Bank v. Vinson*,¹ a case brought under Title VII of the Civil Rights Act of 1964 which prohibits discrimination in employment.² In *Meritor*, the Court recognized two types of sexual harassment: "harassment that involves the conditioning of concrete employment benefits on sexual favors," commonly referred to as *quid pro quo* sexual harassment "and harassment that, while not affecting economic benefits, creates a hostile or offensive working environment," commonly known as hostile environment sexual harassment.³ In Title VII cases, the Court typically applies principles of agency to determine if an employer may be held liable for monetary damages when a supervisor sexually harasses a subordinate employee. While the Court's initial decisions dealt with sexual harassment in the employment context, sexual harassment claims were becoming increasingly common in the educational environment where students were bringing allegations of sexual harassment by teachers or by other students under Title IX of the Education Amendments of 1972.

Title IX of the Education Amendments of 1972 states in relevant part that, "No person in the United States, shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance"⁴ The Office of Civil Rights within the Department of Education is charged with the administrative enforcement of Title IX. The U.S. Supreme Court has also held that an individual has an implied private right of action under Title IX to pursue a judicially imposed remedy.⁵

Since its enactment, Title IX has been primarily used by women and girls seeking equal treatment in educational programs and activities.⁶ Recently, Title IX has been used as a vehicle to challenge sexual harassment in the classrooms and on campuses. In *Franklin v. Gwinnett County Public Schools*, the Court recognized a teacher's sexual harassment of a student as a form of discrimination based on sex that violated Title IX and

¹ 477 U.S. 57 (1985). For a discussion of sexual harassment generally, see CRS Report 98-34, *Sexual Harassment and Violence Against Women: Developments in Federal Law*, by Charles V. Dale.

² 42 U.S.C.A. § 2000e *et seq.* (West 1994 & Supp. 1998).

³ 477 U.S. at 62.

⁴ 20 U.S.C.A. § 1681 (West 1990 & Supp. 1998).

⁵ *Cannon v. University of Chicago*, 441 U.S. 677 (1979).

⁶ *Cohen v. Brown University*, 101 F.3d 155 (1st Cir. 1996), *cert. denied*, 520 U.S. 1186 (1997).

allowed the victim to receive monetary damages.⁷ However, the *Franklin* decision did not address the question of when a school district would be liable for monetary damages for the sexual harassment of a student by a district teacher. Nor did the *Franklin* decision address a district's liability for sexual harassment of a student by another student. This report summarizes the recent legal developments in the area of Title IX and sexual harassment since the Court's decision in *Franklin*.

Sexual Harassment of A Student By Teacher

In *Gebser v. Lago Vista Independent School District*,⁸ the Court established the standard of liability that courts apply when determining if a school district should be held liable for monetary damages under Title IX when a district teacher sexually harasses a student. In *Gebser*, a high school teacher entered into a sexual relationship with one of his students. The relationship continued with the two often having sexual intercourse during class time, but not on school property. The student never informed school officials or her parents about the relationship. The relationship was brought to light after they were discovered by police. The teacher was criminally prosecuted, fired from his teaching position, and had his teaching license revoked by the state. The Court held that liability for monetary damages under Title IX will not lie "unless an official of the school district who at a minimum has authority to institute corrective measures on the district's behalf has actual notice of, and is deliberately indifferent to, the teacher's misconduct."⁹ Since no appropriate official of the school district was even aware of the relationship, let alone able to take corrective measures, the student was unable to recover monetary damages.

Sexual Harassment of Student By Another Student

The issue of when a school district will be held liable for sexual harassment of a student committed by another student or students was addressed by the U.S. Supreme Court in *Davis v. Monroe County Board of Education*.¹⁰ Aurelia Davis brought suit, on behalf of her daughter LaShonda, against the Monroe County Board of Education and two school officials alleging violation of Title IX for their failure to prevent a fellow student from sexually harassing LaShonda.¹¹ Davis' suit sought \$500,000 in compensatory and punitive damages. The Davis' complaint was dismissed by the district court, but on appeal

⁷ 503 U.S. 60 (1992).

⁸ 524 U.S. 274, 118 S. Ct. 1989 (1998). See also CRS Report RS20211, *Title IX and School District Liability for Sexual Harassment by a Teacher: Gebser v. Lago Vista Independent School District*, by Kimberly D. Jones.

⁹ 118 S. Ct. at 1993.

¹⁰ 120 F.3d 1390 (11th Cir. 1997), *rev'd*, ___ U.S. ___, No. 97-843, slip op. (U.S. May 24, 1999).

¹¹ LaShonda Davis alleges that during her 5th grade year at Hubbard Elementary School she was subjected to at least eight incidents of sexual harassment committed by a male student who was in several of her classes. She allegedly reported these incidents to three of her teachers, to the school's principal and to her mother. In addition, Aurelia Davis, complained to the school principal and to two teachers about the incidents. The harassment stopped when the male student was charged with sexual battery. Davis alleged that LaShonda's grades dropped and she threatened suicide because of the harassing behavior.

was reinstated by a three judge panel of the 11th Circuit. The school board sought a rehearing of the decision before the full panel of the 11th Circuit, which reversed the three-judge panel and dismissed Davis' Title IX claim. Davis appealed to the U.S. Supreme Court which agreed to hear the appeal.¹²

On appeal, the Supreme Court reversed the decision of the 11th Circuit Court of Appeals, finding that a school district, under certain circumstances, may be liable under Title IX for student-on-student sexual harassment. Justice O'Connor, writing for the majority, held that “[a] private Title IX damages action may lie against a school board in cases of student-on-student harassment, but only where the funding recipient is deliberately indifferent to sexual harassment, of which the recipient has actual knowledge, and that harassment is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.”¹³

In this case, the harassment took place “during school hours and on school grounds.”¹⁴ The majority then concluded “that recipients of federal funding may be liable for 'subject[ing]' their students to discrimination where the recipient is deliberately indifferent to known acts of student-on-student sexual harassment and the harasser is under the school's disciplinary authority.”¹⁵ According to Justice O'Connor, the “deliberate indifference” standard “sought to eliminate any 'risk that the recipient would be liable in damages not for its own official decision but instead for its employees' independent actions.”¹⁶

The *Davis* decision also provided guidance on what is actionable discrimination under Title IX. Justice O'Connor defined discrimination under Title IX as sexual harassment that is “so severe, pervasive, and objectively offensive that it can be said to deprive the victims to access to the educational opportunities or benefits provided by the school.”¹⁷ The majority further defined discrimination as “behavior . . . serious enough to have the systemic effect of denying the victim equal access to an educational program or activity.”¹⁸ Some factors the Court found compelling were “the ages of the harasser and the victim and the number of individuals involved.”¹⁹ The Court explicitly noted that “[d]amages are not available for simple acts of teasing and name-calling among school children . . . even where these comments target differences in gender.”²⁰

¹² 120 F.3d 1390 (11th Cir. 1997), *cert. granted in part*, 66 U.S.L.W. 3387 (U.S. Sept. 29, 1998) (No. 97-843).

¹³ No. 97-843, slip op. at 1 (U.S. May 24, 1999).

¹⁴ No. 97-843, slip op. at 15.

¹⁵ *Id.* at 16.

¹⁶ *Id.* at 11 (quoting *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 290-291).

¹⁷ *Id.* at 19-20.

¹⁸ *Id.* at 22.

¹⁹ *Id.* at 20.

²⁰ *Id.* at 21.

The Court's holding stressed that it is not meant to dictate the type of discipline that schools must use and urges lower courts to “refrain from second guessing the disciplinary decisions made by school administrators.”²¹ To ensure this, the majority stated that the decision of school administrators will not be disturbed unless their “response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances.”²² The Court noted that “[A] university might not, for example, be expected to exercise the same degree of control over its students that a grade school would enjoy . . . and it would be entirely reasonable for a school to refrain from a form of disciplinary action that would expose it to constitutional or statutory claims.”²³

The decision reinstated Davis' Title IX claim on the ground that she may be able to meet the above standard based on her allegations of “repeated acts of sexual harassment,” multiple victims, and the “negative effect on her daughter's ability to receive an education.”²⁴ The Court also noted that there was support for the conclusion that G.F.'s actions were severe, pervasive, and objectively offensive, and that Davis warranted an opportunity to “show both actual knowledge and deliberate indifference on the part of the Board, which made no effort whatsoever either to investigate or to put an end to the harassment.”²⁵

Sexual Harassment of Student By Third Party

While claims alleging sexual harassment by a teacher or fellow student are more common, at least one federal court has considered sexual harassment committed by a third party who is somehow affiliated with the educational program, activity or institution. In *Brown v. Hot, Sexy and Safer Productions, Inc.*, two students and their parents brought a hostile environment sexual harassment claim under Title IX based on an AIDS awareness program put on by the school, but conducted by an individual contracted by the school.²⁶ The students alleged that the presenter's profane, offensive, and sexually oriented language created a hostile sexual environment. The court, noting the dearth of Title IX caselaw in the area, referred to Title VII caselaw to analyze the case.²⁷ The court relied on the same Title VII elements that the 10th Circuit Court of Appeals used in the *Seamon v. Snow*.²⁸ There, the court held that for a school to be held liable for hostile environment sexual harassment, the plaintiff must show:

- (1) that he is a member of a protected group; (2) that he was subject to unwelcome harassment; (3) that the harassment was based on sex; (4) that the sexual harassment

²¹ *Id.* at 17.

²² *Id.*

²³ *Id.* at 18.

²⁴ *Id.* at 23.

²⁵ *Id.* at 23.

²⁶ 68 F.3d 525 (1st Cir. 1995), *cert. denied*, 516 U.S. 1159 (1996).

²⁷ 68 F.3d at 540. "Because the relevant caselaw under Title IX is relatively sparse, we apply Title VII caselaw by analogy."

²⁸ 84 F.3d 1226 (10th Cir. 1996).

was sufficiently severe or pervasive so as unreasonably to alter the conditions of his education and create an abusive educational environment; and (5) that some basis for institutional liability has been established.²⁹

The court concluded that the students had failed to state a claim under Title IX based on these factors.

²⁹ 84 F.3d at 1232.